APPENDIX

NOV 29 1973

MICHAEL RODAK, JR., C

In The

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1517

GEORGIA THERESA GILMORE, GUSSIE CARLTON, SYLVIA JOHNSON, J.C. SMITH, MATTIE CARGILL, FRED HARRIS, GEORGE STEPHENS, ELIZABETH BROWN, on behalf of themselves and all others similarly situated,

Petitioners,

-v.-

CITY OF MONTGOMERY, ALABAMA, a Municipal Corporation; BOARD OF COMMISSIONERS OF THE CITY OF MONTGOMERY; JIM ROBINSON, CLIFF EVANS and J.B. RUCKER, as Members of the Board of Commissioners of the City of Montgomery; RECREATION BOARD OF THE CITY OF MONTGOMERY; RUFUS A. LEWIS, JEAN B. CAMPBELL, JAMES HALL, MUREAL R. CRUMP, CHARLES STAKELY, CHARLES W. ROSS and JAMES E. VICE, JR., as Members of the Recreation Board of the City of Montgomery; HENRY M. ANDREWS, as Superintendent of the Parks and Recreational Program for the City of Montgomery, Alabama,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 10, 1973
CERTIORARI GRANTED October 15, 1973

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

No. 1490-N

GEORGIA THERESA GILMORE, GUSSIE CARLTON, SYLVIA JOHNSON, J. C. SMITH, MATTIE CARGILL, FRED HARRIS, GEORGE STEPHENS, ELIZABETH BROWN:
On behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CITY OF MONTGOMERY, ALABAMA, a Municipal Corporation; BOARD OF COMMISSIONERS OF THE CITY OF MONTGOMERY: JIM ROBINSON, CLIFF EVANS and J. B. RUCKER, as Members of the Board of Commissioners of the City of Montgomery; RECREATION BOARD OF THE CITY OF MONTGOMERY: RUFUS A. LEWIS, JEAN B. CAMPBELL, JAMES HALL, MUREAL R. CRUMP, CHARLES STAKELY, CHARLES W. ROSS, and JAMES E. VICE, JR., as Members of the Recreation Board of the City of Montgomery; HENRY M. ANDREWS, as Superintendent of the Parks and Recreational Program for the City of Montgomery, Alabama,

Defendants.

For Plaintiff:

Solomon S. Seay, Jr.
352 Dexter Avenue
Montgomery, Alabama

Morris Dees & Joseph J. Levin, Jr.
125 Washington Avenue
Montgomery, Alabama

For Defendants:

Hill, Robison, Belser, Brewer & Phelps
P. O. Box 901
Montgomery, Alabama

Walter J. Knabe
P. O. Box 2069
Montgomery, Alabama

Drayton Hamilton
26 S. Perry Street
Montgomery, Alabama 36104

DATE	PROCEEDINGS
12-22-58	Complaint filed and summons issued
1- 9-59	Motion to dismiss by all defendants except Mrs. James Fitts Hill. Notice by all defendants except Mrs. James Fitts Hill of their intention to take the depositions of Georgia Theresa Gilmore, Gussie Carlton, Sylvia Johnson, J. C. Smith, Mattie Cargill, Fred Harris, George Stephens, Elizabeth Brown and Solomon S. Seay, Jr.
1-15-59	Marshal's return on summons and complaint Executed 12-22-58, served City of Montgomery, Ala., and Board of Commissioners of the City of Montgomery, Ala.,

by serving a copy for each on Mayor W. A. Gayle; served Park and Recreation Board of City of Montgomery, Ala., by serving copy on Jack Hope; personal service on Florian Strassburger; personal service on Father M. J. Rafferty; Board of Commissioners of the City of Montgomery, Ala., by serving a copy on Clyde Sellers; personal service on T. A. Belser; Board of Commissioners of the City of Montgomery, Ala., by serving a copy on Frank W. Parks; personal service on W. A. Gayle; Executed 12/23/58 by personal service on Rev. Louis Armstrong; Executed 1/13/59 by personal service on Mrs. James Fitts Hill, Individually and as Chairman of Park and Recreation Board of the City of Montgomery, Ala.

1-28-59 Motion to Mrs. James Fitts Hill, Defendant, to dismiss

2- 3-59 Notice of defendants that they desire to orally argue motions set for hearing 2/4/59 and they may desire to adduce testimony

2- 4-59 Order denying defendants' motions filed on 1/9/59 and 1/28/59 to dismiss

2- 6-59 Depositions of Georgia Theresa Gilmore, Gussie Carlton, Sylvia Johnson, J. C. Smith, Mattie Cargill, Fred Harris, George Stephens, and Elizabeth Brown

2- 9-59 Defendants' motion to stay proceedings

" Order overruling and denying defendants' motion to stay

2-17-59 Defendants' answer to complaint

4- 3-59 Plaintiffs' motion for summary judgment

4-24-59 Plaintiff's application for leave to correct citation

4-24-59 Plaintiff's memorandum brief in support of motion for summary judgment

5- 4-59 Order granting plaintiff's motion to correct motion for summary judgment, or to amend said motion

7-21-59 Order overruling and denying plaintiffs' motion for summary judgment and setting case for trial commencing September 8, 1959, at 10:00 a.m.

9- 9-59 Memorandum Opinion

" Judgment - Order that Ordinance 21-57 of the City of Montgomery, Code of the City of Montgomery, Alabama is unconstitutional and void; further order that the custom of denying negroes the use of the parks in Montgomery is unconstitutional and void - permanent Injunction

" Writ of Injunction issue

9-29-59 Defendants notice of appeal to United States Circuit Court of Appeals

9-29-59 Appeal bond in the sum of $250.00

10-13-59 Marshal's return on Writ of Injunction - Executed 9/11/59 by personal service on W. A. Gayle, Frank W. Parks, Father

M. J. Rafferty, Florian Strassburger, Jack Hope, T. A. Belser, Earl D. James, Rev. Louis Armstrong, and Clyde Sellers, served a copy on W. A. Gayle for the City of Montgomery and for the Board of Commissioners of the City of Montgomery, on L. B. Sullivan; on 10/12/59 by personal service on Mrs. James Fitts Hill and on Park and Recreational Board of the City of Montgomery by handing a copy to Mrs. James Fitts Hill

10-22-59 Court Reporter's Transcript of hearing on September 8, 1959.

10-28-59 Stipulation of counsel as to record on appeal

11- 4-59 Transcript of record on appeal forwarded to the Clerk, U. S. Court of Appeals

5-16-60 Judgment from the Court of Appeals, Fifth Circuit, modifying judgment of District Court in accordance with the opinion of the Circuit Court and affirming judgment of District Court so modified.

5-18-60 Order that this Court will and does retain jurisdiction of this cause until further order; further ORDER that the original judgment herein entered on 9/9/59, and the matters set out in the Memorandum Opinion entered herein on the same date are unchanged and without modification except as set out above.

4-22-64 Order closing case without prejudice to any party petitioning this Court for a reinstatement.

8/7/70 Plaintiffs' motion to cite defendants for contempt and for relief

8/12/70 ORDER that defendants file written response to plaintiffs' motion within twenty days from the date of this order. (copies mailed counsel; certified copies delivered to Marshal, along with copy of motion, for service on defendants.)

8/13/70 Marshal's return of service of motion filed 8/7/70 and order of 8/12/70. Service on August 12, 1970, on Cliff Evans, Montgomery City Commissioners, John B. Rucker, Montgomery City Commissioner, City of Montgomery, Alabama, Earl James, Mayor, Henry Andrews, Supt. of Parks & Recreation Board, Parks and Recreation Board, Mureal Crump, Chairman, Parks and Recreation Board, and Florian Strassburger, Rev. Louis Armstrong, Margaret McFall, and James E. Vice, Members of Parks and Recreation Board.

8/13/70 Defendants' answer to motion of 8/7/70.

9/1/70 ORDER setting this cause for trial at 9:30a.m., Oct. 16, 1970. (Copies mailed to counsel.)

1970

Sept. 9 Plaintiffs' notice of taking the depositions of William Lloyd Brannon, Mayor Earl James; Lynn Bozeman; Florian Strassburger; Henry M. Andrews, Jr., and J. Aronstein.

9 Plaintiffs' amendment to their motion filed Aug. 7, 1970.

18 Plaintiffs' motion for restraining order.

18 Plaintiffs' correction to their amendment to motion filed on Sept. 9, 1970.

23 ORDER that the trial of this cause, heretofore scheduled for October 16, 1970, be rescheduled for October 23, 1970, at 9:30 a.m. (Copies mailed to counsel.)

Oct. 1 Plaintiffs' motion for continuance.

1 Plaintiffs' "Motion to Treat Plaintiffs' 'Motion for Relief filed August 7, 1970' as an Amendment to Original Complaint."

2 ORDER that the trial of the cause, presently scheduled for October 23, 1970, be rescheduled for November 20, 1970, at 9:30 a.m., Montg., Ala. (Copies mailed to counsel.)

2 ORDER granting plaintiffs' motion filed 10/1/70 asking this Court to treat plaintiffs' motion for relief filed 8/7/70, as an amendment to plaintiffs' complaint. (Copies mailed to counsel.)

8 Depositions of William L. Brannon, Mayor Earl D. James, Florian A. Straussburger, Durwood Lynn Bozeman, and Henry M. Andrews.

14 Plaintiffs' notice of taking the depositions of Joe Marshall and Allyn McKeen.

14 Plaintiffs' request for ruling on motion.

15 Response of City of Montgomery to request for ruling on amendment as filed by the plaintiffs.

19 ORDER that all claims by plaintiffs in this case with reference to the following proposed recreational facilities be dismissed:
Billingslea School - Joint School, Park and Recreation Facility
Hale School - Joint School, Park and Recreation Facility
Westwood-Westgate - Park and Recreation Facility Only
G.W. Smiley Development - Park and Recreation Facility Only
Hayneville Sch. Dist. - Park and Recreation Facility Only
Old Selma Road - Park and Recreation Facility Only
Terminal Road - Park and Recreation Facility Only
Bruce Tennis Complex (otherwise known as Bruce Field)
(Copies mailed to counsel.)

29 Depositions of Joseph E. Marshall and Allyn McKeen, with exhibits.

Nov. 10 ORDER on pretrial hearing. Issues in controversy set out. (Copies mailed to counsel.)

20 Plaintiffs' offer of evidence and request for judicial notice.

Dec. 30 ORDER that the continuation of the hearing on the merits of this case, heretofore scheduled for January 18, 1971, is rescheduled to commence at 9:30 a.m., February 10, 1971. (Copies mailed to counsel.)

1971

Jan. 29 Joint plan of parties.

29 ORDER approving, accepting, and by reference adopting and making a part of this judgment the plan (which disposes of all issues involved in this litigation) filed this date by the parties. Defendants ordered to file written reports on implementation of plan 6 months from date of this order and every 6 months thereafter until further order. Costs taxed against defendants. (Copies mailed to counsel.) Jurisdiction specifically retained.

Feb. 5 Stipulation of parties to withdraw evidence.

5 ORDER granting motion to withdraw certain items of evidence. (Copies mailed to counsel.)

Mar. 24 Court Reporter's excerpt transcript from hearing of Nov. 20, 1970.

26 Received costs bill in the amount of $3,618.74 from plaintiffs' attorney.

Apr. 8 Costs in amount of $3,618.74 taxed against defendants per costs bill received. (Copies mailed to counsel.)

May 6 Court Reporter's excerpt transcript of testimony of William Chandler from hearing of Nov. 20, 1970.

July 29 Defendants' progress report filed in accordance with order of 1/29/71.

Sept. 8 Plaintiffs' motion for supplemental relief

8 Plaintiffs' motion for temporary restraining order

8 Plaintiffs' motion for preliminary injunction

9 ORDER to show cause. Order denying plaintiffs' motion for a temporary restraining order enjoining defendants, without notice to said defendants and without an opportunity for said defendants to be heard. Defendants shall show cause within 10 days from this date why plaintiffs' motion for a preliminary injunction should not be advanced on the calendar of this Court and given precedence over all matters except those of a similar nature. (Copies mailed to counsel.)

14 Plaintiffs' motion to expedite time for answering interrogatories

14 Plaintiffs' interrogatories to defendant Henry M. Andrews, Jr.

14 ORDER granting plaintiffs' motion to shorten the time within which defendants are to answer interrogatories. Defendants allowed 15 days from this date to file responses to said interrogatories. (Copies mailed to counsel.)

20 Answer of defendants to show cause order of 9/9/71

21 ORDER setting plaintiffs' motion for supplemental relief for hearing on its

merits at 9 a.m., 12/1/71, in U.S. District Courtroom, 2nd Floor, Federal Building, Montgomery, Ala. Further ordered that (1) the defendants file within 20 days from this date responsive pleading to plaintiffs' motion; (2) each party furnish counsel for opposing party on or before 11/18/71, the names and addresses of witnesses to be used and for copying and inspection, all documents that are to be offered in evidence; (3) all discovery in connection with plaintiffs' motion and the hearing to be conducted be completed by 11/23/71; and (4) the parties file their briefs on or before 11/29/71. (Copies mailed to counsel.)

29 Answers of defendant Henry M. Andrews to interrogatories

Oct. 4 Plaintiffs' notice of taking deposition of Henry M. Andrews.

12 Response of defendants to plaintiffs' motion for supplemental relief

Dec. 1 Defendants' motion for substitution of parties defendant

1 Parties agreement for submission of case

1972

Jan. 17 ORDER of Substitution. Jim Robinson, Cliff Evans and J. B. Rucker are substituted as party defendants and as members of the Board of Commissioners of the City of Montgomery for W. A. Gayle, Frank W. Parks and Clyde C. Sellers.

Rufus A. Lewis, Jean B. Campbell, James Hall, Mureal R. Crump, Charles W. Ross, and James E. Vice, Jr. are substituted as party defendants and as members of the Recreation Board of the City of Montgomery (formerly the Park and Recreation Board of the City of Montgomery) for Mrs. James Fitts Hill, Father M. J. Rafferty, Rev. Louis Armstrong, Florian Strassburger and Jack Hope. Henry M. Andrews is substituted as a party defendant and as Superintendent of the Parks and Recreational Program for the City of Montgomery, Alabama, for T. A. Belser. (Copies mailed to counsel and substituted defendants.)

18 ORDER (1) declaring the City of Montgomery, Alabama's policy and practice of permitting the use of city owned or operated recreational facilities by any private school, or private school affiliated group, which school or group is racially segregated or which has a racially discriminatory admissions policy unconstitutional; (2) enjoining said City of Montgomery, Alabama, its officers, agents, etc. from permitting or in any way sanctioning the use of city owned or operated recreational facilities by any private school, or private school affiliated group, if such school or group is racially segregated or if it has a racially discriminatory admissions policy; (3) declaring said City of Montgomery, Alabama's policy and practice of permitting the use of city owned or operated recreational facilities by any private group, club or organization which has a racially discriminatory

admissions policy unconstitutional; (4) enjoining said City of Montgomery, Alabama, its officers, etc. from permitting or in any way sanctioning the use of city owned or operated recreational facilities by any private group, club or organization which is not affiliated with a private school and which has a racially discriminatory admissions policy. Costs taxed against defendants.

18 Writ of injunction issued. Copies of writ of injunction and order mailed by certified mail (return receipt requested) to Charles Stakely, J. B. Rucker, Cliff Evans, Jim Robinson, Henry M. Andrews, Mureal R. Crump, Jean B. Campbell, Charles W. Ross, James E. Vice, Jr., Rufus A. Lewis, and James Hall. Copies of writ and order by regular mail to Morris Dees and Joseph J. Levin, Jr.,; Gray, Seay & Langford; Walter Knabe; Drayton Hamilton; copies handed to Joseph D. Phelps

31 Defedants' report as to the progress made toward implementing the provisions of the order entered 1/18/72.

Feb. 11 Defendants' notice of appeal to U. S. Court of Appeals, 5th Circuit from the order entered in this Court 1/18/72. (Copies of notice mailed to Edward W. Wadsworth, Clerk, U. S. Court of Appeals; Morris Dees and Joseph J. Levin; Gray, Seay & Langford; Walter Knabe; Drayton Hamilton.)

11 Bond for costs on appeal ($250 cash)

March 15 Defendants' designation of parts of record to be included in appendix

15 Defendants' motion for stay pending appeal

16 ORDER staying that part of the decree entered 1/18/72, reading as follows: "That said City of Montgomery, Alabama, its officers, agents, servants, employees and those acting in concert with it, be and each is hereby enjoined from permitting or in any way sanctioning the use of city owned or operated recreational facilities by any private group, club or organization which is not affiliated with a private school and which has a racially discriminatory admissions policy." All other provisions in said decree shall remain in force and effect. (Copies mailed to counsel.)

21 Clerk's certificate as to record

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA THERESA GILMORE, GUSSIE CARLTON, SYLVIA JOHNSON, J. C. SMITH, MATTIE GARGILL, FRED HARRIS, GEORGE STEPHENS, ELIZABETH BROWN, on behalf of themselves and all others similarly situated, Plaintiffs,	CIVIL ACTION NO. 1490-N
vs.	TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION REQUESTED
CITY OF MONTGOMERY, ALABAMA, a Municipal Corporation; BOARD OF COMMISSIONERS OF THE CITY OF MONTGOMERY; W. A. GAYLE, FRANK W. PARKS and CLYDE C. SELLERS, as Members of the Board of Commissioners of the City of Montgomery; PARK AND RECREATION BOARD OF THE CITY OF MONTGOMERY; MRS. JAMES FITTS HALL, FATHER M. J. RAFFERTY, REV. LOUIS ARMSTRONG, FLORIAN STRASSBURGER, and JACK HOPE, as Members of the Park and Recreation Board; T.A. BELSER, as Superintendent of the Parks and Recreation Program of the City of Montgomery, Alabama, Defendants.	Filed Sept. 8, 1971

MOTION FOR SUPPLEMENTAL RELIEF

1. This motion seeks to have the defendants in the above-styled cause temporarily and permanently enjoined from permitting or in any way sanctioning the use of the City recreational facilities by any school, group, or organization which is racially segregated.

2. The City of Montgomery, through its various Athletic and Recreation Boards, owns and operates numerous football facilities, including Crampton Bowl and Goodwyn Community Center football field. These latter two facilities are both well maintained, with excellent physical plants and playing areas and with artificial lights to permit the playing of night games.

3. The costs involved in purchasing, operating and maintaining the City's recreational facilities have been, and continue to be, financed primarily with City revenues. Plaintiffs and the class they represent constitute approximately one-third of the population of the City of Montgomery and thus

contribute significantly, through the taxes paid by them, to the upkeep and maintenance of these facilities.

4. Stephens-Spear School is a private school located in the City of Montgomery. Plaintiffs allege that Stephens-Spear is racially segregated in that only white students are permitted to attend. The administrator of the school, Jimmy Spear, has made this clear in a letter sent by the school to parents of prospective students when he states unequivocally that "This is a private school and will not be integrated." (Exhibit A).

5. Central Alabama Academy is also a private school located in Montgomery. Plaintiff alleges that Central Alabama Academy is also racially segregated in that only white students are permitted to attend.

6. Stephens-Spear and Central Alabama Academy will both field varsity football teams during the 1971-72 academic year. (Exhibit B). Stephens-Spear and Central Alabama belong to

and play only members of the Private School League. (Exhibit C). Plaintiffs allege, upon information and belief, that all the members of the Private School League maintain racially discriminatory admissions policies.

7. The City of Montgomery presently has a practice and policy of permitting any private school or club, even if the school or club is racially segregated, to use available City recreational facilities at little or no cost to the respective school or club. Stephen-Spear's home football games and Central Alabama's home football games are scheduled to be played at night at Goodwyn Community Center's football field. (Exhibit D). Thus, defendants are permitting these racially segregated schools to use the City's facilities, fields, and lights at little or no charge to the schools.

8. Negro residents of the City of Montgomery have for too long a time been unknowingly forced to

subsidize, through their taxes, racially segregated private schools and organizations. This Court has already been confronted with one instance of City funds being used to finance and support a segregated organization. See Smith v. YMCA, 316 F. Supp. 899 (M.D. Ala. 1970). Plaintiffs ask the Court to stop this unconscionable and impermissible practice by declaring that the use of City owned and operated recreational facilities by racially segregated private schools, besides completely frustrating public policy, violates plaintiffs' constitutional rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

WHEREFORE PREMISES CONSIDERED, plaintiffs resepctfully pray that this Court:

(a) Enter a judgment declaring the City of Montgomery's policy and practice of permitting the use of City owned and operated recreational facilities by racially segregated private schools and clubs

to be unconstitutional in violation of the Fourteenth Amendment to the United States Constitution.

(b) Issue a Temporary Restraining Order and a Preliminary Injunction restraining defendants from permitting Stephens-Spear School and Central Alabama Academy and any other racially segregated private school from playing on City owned and operated recreational facilities until the merits of this cause can be judicially determined.

(c) Issue a Permanent Injunction against defendants, their officers, agents, servants, and employees, restraining them from allowing or in any way sanctioning the use of City owned and operated recreational facilities by any private school group, club, or organization which is racially segregated or which has a racially discriminatory admissions policy.

(d) Grant such further, different or other relief deemed appropriate by the Court under the circumstances.

LEVIN & DEES
125 Washington Avenue
P. O. Box 2087
Montgomery, Alabama 36103

By: s/ Howard Allyn Mandell
Howard Allyn Mandell

ATTORNEYS FOR PLAINTIFFS

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Before me, a Notary Public in and for the State of Alabama at Large, personally appeared Howard Allyn Mandell, who, being duly sworn, deposes and says that the foregoing allegations of fact are true and correct to the best of his information, knowledge and belief.

s/ Howard Allyn Mandell
Howard Allyn Mandell

SWORN TO AND SUBSCRIBED before me
this 8th day of September, 1971.

s/ Becky Ann Logan
Notary Public

- - - - -

EXHIBIT A

STEPHENS-SPEAR SCHOOL
2530 East South Blvd.
P. O. Box 11401
Montgomery, Alabama 36111

Your child's future, as well as his present happiness and success, depends to a large extent upon the quality of his elementary, junior and senior high school program. The purpose of the Stephens-Spear School is to offer a superior scholastic opportunity for its students in grades one through twelve, so that these young people can become more capable, creative, confident, problem-solving, and patriotic young citizens.

LIMITED CLASSROOM ENROLLMENT

The maximum enrollment per class is twenty-five students.

FACULTY AND STAFF

The teachers employed will have appropriate

college degrees and will be certified by the State of Alabama. Some of the finest teachers in Montgomery have already been employed for the 1970-71 school year. The majority of our junior and senior high teachers have their Master's Degree in the subject which they will teach.

The principal, Sarah D. Spear, is a Huntingdon College graduate with a major in elementary teacher education. In addition to having eight years of classroom teaching experience at Flowers Elementary School at Montgomery, she has done graduate study in educational administration and supervision at the University of Alabama and at Auburn University. The educational program of the school will be coordinated by her.

The administrator, Jimmy Spear, is also a Huntingdon graduate with a major in economics. All business matters pertaining to the school will be managed by him.

SCHOOL CALENDAR

We will have our school calendar coincide with that of the public schools. This is for the convenience of families who may have children at other schools.

The school day will begin at 8:30 a.m. and end at 2:50 p.m.

CLASSROOM ORGANIZATION

In the elementary school we offer the graded, self-contained classroom organization. We realize that when one teacher has control of the children for most of the day, more careful guidance of individual progress is possible. Also, the student feels more secure in a situation such as this, and more time is then available for the instructional program. However, for the junior and senior high school, there will be departments, and it will be necessary for students to change classes.

The course of study for the junior and senior

high school will meet the requirements set forth in the Alabama Course of Study. We have, however, used the Alabama Course of Study as our minimum requirements, and we will offer an even more enriched curriculum. We have researched the required units of subjects required by colleges for entrance and will be able to discuss this with you. For further details it will be necessary to contact the school for the junior and senior high subjects are too complex to explain fully in this information bulletin.

STUDENT CONDUCT

We realize discipline is imperative if students are to become effective citizens of a constantly changing society. Our faculty is concerned not only with maintaining good discipline, but also with teaching good discipline, for some day it will be necessary for our students to discipline themselves. We believe students must learn to apprecaite and to understand the reasons for rules and laws and to

realize a citizen's obligation to obey and respect them.

We will attempt to reach the principles of proper democratic conduct simply as a preferred and desirable way of life for the individual, home, school, community, state, and nation.

SCHOOL CAMPUS AND BUILDING

The Stephens-Spear School is located on a four and one-half acre site on the East South Boulevard. Across the street is the beautiful, new Montgomery Mall Shopping Center and Governor's House Motel. In addition to the easily accessible location, there is ample space for playground and recreational facilities.

We believe the quality of a school's plysical facility is one of the strands woven into the fabric of forces shaping the quality of education. It is possible for superior teachers to teach well in spite of handicaps of an inadequate building. But

these same teachers can significantly improve the quality of the educational program when they work in a desirable physical environment.

We have a modern, air-conditioned building which was constructed in 1966. Space is available for seventeen classrooms. library, and cafeteria. Of prime importance to students, faculty and parents, is the fact that the building is rated triple A by the fire insurance rating bureau. A special attraction for the students is a large swimming pool, which is fenced for safety purposes, and a two-acre playground located behind the school.

SCHOOL OWNERSHIP

S and S Corporation owns the Stephens-Spear School. All stock in this corporation is owned by the directors, Erma M. and Marion G. Stephens, and Sarah D. and James R. Spear. This corporation has purchased the building and land and has adequate working capital to finance a sound program of quality education. S and S Corporation

has not and will not use any Federal or State money. This allows us the opportunity to offer your child a sound educational program without governmental regulations.

STUDENT ADMISSION.

Each applicant will be carefully evaluated by the principal before being accepted. This is a private school and will not be integrated.

Applicants for the first grade will be administered a reading readiness test before school opens. Acceptable scores must be made before the student may begin first grade work. If a child who is five years of age should make acceptable scores on the test and, in the opinion of the principal, appears to be ready to begin school, then this student may be admitted.

SCHOOL EXPENSE

Tuition for grades one through nine will be $600, and $690 for grades ten through twelve. If

this amount is paid in full by September 1, a discount of $25 will be allowed. Upon enrollment $150 is payable. This $150 is subtracted from the $600, or $690, and the balance of $450 for grades 1-9, or $540 for grades 10-12, remains. For the convenience of parents, an installment plan may be arranged with payments of $50 per month for grades 1-9, or $60 per month for grades 10-12, for nine months beginning September 1.

In the elementary school reading textbooks will be furnished by the school. The remaining books will be purchased by the student. The exact cost will depend upon the grade level. These books will be sold at the school for your convenience.

LOCATION

The school building is located 2530 East South Boulevard. Until June 10, our temporary office will be at 1120 South Court Street. Office hours are from 9 a.m. until 6 p.m., Monday through Saturday. We

invite you to visit and discuss the school and your child. You may telephone us at 262-0348, or call us at our home at 272-8815.

Transfer Students Backbone Of Stephens-Spear Squad

By ROY THOMAS
Advertiser Sports Writer

"Montgomery football fans are accustomed to a winner, and that is what we at Stephens-Spear expect to give them," said Spartan Head Coach Jimmy Spear.

Spear and assistants John Safer and Mike Douglas are especially excited about senior transfers Ronnie Williams, 182-pounder from South Carolina; Mike Cowen, 150-pound quarterback and defensive halfback from South Montgomery Academy, David Nicholson, 160-pound wide receiver from Denver, Colo.; Barney Mahaffey, 185-pound defensive end from Jeff Davis; Charles Marshall, 185-pound tackle from Jeff Davis, and Tommy Duke, 220-pound tackle from Montgomery Academy.

This is the first season that Stephens-Spear has participated in football after the Alabama Private School Athletic Association came into being last year.

The Spartans have a good nucleus with the six talented transfers to lead their other 17 teammates.

The squad by positions are quarterbacks Ricky Wilson and Cowen, flankers Ronnie Dubose and Johnny McInnis, ends Nicholson, Mahaffey, Russell Savage and Barry Adams, running backs Williams, Robert Martin, Russell Purdy, Don Richardson and Jim Jarvey.

On the line there is center Buddy Vann, guards Jim McKinney, Charles Shaw and Ronnie Wasson, tackles Duke, Marshall, Steve Evans, John Powell, Jack Crysel and Frank Crozier.

All of Stephens-Spear home games will be played at Goodwyn Junior High School.

The Spartans will be big with Duke tipping the scales at 220. Other stout players are Crysel 231, Crozier 200, Powell 197, Williams 183 and Vann 190.

EXHIBIT B

ADVERTISER-JOURNAL
23rd Annual Football Section
Thurs., Sept. 2, 1971

EXHIBIT B

ADVERTISER-JOURNAL
23rd Annual Football Section
Thurs., Sept. 2, 1971

Central Academy to Field First Grid Squad in 1971

Central Alabama Academy will field its first football team ever this year with Coach Steve Jones leading the way for the infant squad.

Jones gets really excited when talking about quarterback Rob Darnell, fullback Bobby Arrant, flanker Trey Holley, tailback John Lachezy and guards Buzzy Stuckey and Mike Dunlap.

Other players on the slim squad are tailback Tim Singleton, quarterback Chuck Lynn, center Tim Stegall, end Jimmy Stuckey, end Dan Lockhart, tackle Randy Brady, tackle David Mullin, tackle Gary Wilson, guard Mike Massey, guard Royce Williams and guard Steve Mosely.

"I think we will have a pretty fair team," said Jones. "We lack depth so a lot of boys will have to play both ways. If we don't have too many injuries we will be all right."

Private School Football Schedule

Private School Football Schedule

EXHIBIT C

ADVERTISER-JOURNAL
Football Section
Thurs. Sept. 2, 1971

SUPPORT THE STEPHENS-SPEAR SPARTANS

1971 FOOTBALL SCHEDULE

Sept. 4 Sat.—Escambia Academy at Atmore.
Sept. 11 Sat.—Edgewood Academy of Wetumpka, home*
Sept. 17 Fri.—West End Academy at Tuscaloosa
Sept. 24 Fri.—Sparta Academy of Evergreen, home*
Oct. 1 Fri.—Union Academy at Dadeville
Oct. 7 Thur.—Central Ala. Academy of Montgomery. Home
Oct. 16 Sat—Autauga Academy, home*
Oct. 23 Sat.—Greenville Academy, home*
Oct. 29 Fri.—Shelby Academy, home*
Nov. 4 Thur.—Perry Academy of Marion, home*

Nicknome: Spartans. School Colors: Blue and Gray

Coaches: Jimmy Spear, Huntingdon College
John Shafer, Auburn University
Mike Douglas, Clemson University

*All home games to be played at 8:00 p.m. at the Goodwyn Community Center football field.

Tickets Are: Adults $1.50. Students $1.00

MOTION FOR TEMPORARY RESTRAINING ORDER

(Number and Title Omitted) (Filed Sep 8, 1971)

Upon the Motion for Supplemental Relief and upon this sworn Motion, Plaintiffs move the Court for a temporary restraining order, restraining the defendants from permitting Stephens-Spear School, Central Alabama Academy, and any other private school which has a racially discriminatory admissions policy from using any City owned and operated football field or facility until such time as the Court has had an opportunity to rule on the merits of this case, and assigns as grounds for said motion the following:

1. The Private School Football League has already begun its 1971-72 football season. Stephens-Spear's first home game is scheduled for Saturday night, September 11, at Goodwyn Community Center football field. Central Alabama Academy's first home football game is scheduled for Thursday night,

September 23, at Goodwyn Community Center football field.

2. This is not the first time the defendants have permitted the City's revenues and facilities to be used by racially segregated private schools and groups. See Smith v. YMCA, supra. Furthermore, these segregated schools and other racially segregated schools and groups will probably request and be allowed to use other City recreational facilities before this cause is decided on the merits by the Court. It is imperative that this unconstitutional practice is terminated before plaintiffs' rights are further violated.

3. The law is so well settled in this area of the law that defendants' conduct is patently unconstitutional. Plaintiffs' Equal Protection and Due Process rights are present and immediate rights and plaintiffs should not be required to suffer further deprivations of their rights while awaiting a ruling from the Court on the merits of the case.

4. Any prejudice or harm to the defendants resulting from the issuance of a Temporary Restraining Order is far outweighed by the irreparable injury which will be suffered by plaintiffs if this motion is denied.

Respectfully submitted,

LEVIN & DEES

By s/ Howard Allyn Mandell
Howard Allyn Mandell

ATTORNEYS FOR PLAINTIFFS

STATE OF ALABAMA)

MONTGOMERY COUNTY)

Before me, a Notary Public in and for the State of Alabama at Large, personally appeared Howard Allyn Mandell, who, being duly sworn, deposes and says that the foregoing allegations of fact are true and correct to the best of his information, knowledge and belief.

s/ Howard Allyn Mandell
Howard Allyn Mandell

SWORN TO AND SUBSCRIBED before me

this 8th day of September, 1971.

s/ Becky Ann Logan
Notary Public

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ORDER TO SHOW CAUSE

(number and Title Omitted) (Filed Sep 9, 1971)

Plaintiffs' motion for a temporary restraining order enjoining the defendants, without notice to said defendants and without an opportunity for said defendants to be heard, is ORDERED to be and the same is hereby denied.

It is further ORDERED that the defendants appear in writing, within ten days from the date of this order, and show cause, if any they have, why plaintiffs' motion for a preliminary injunction should not be advanced on the calendar of this Court and given precedence over all matters except those of a similar nature.

Done, this the 9th day of September, 1971.

s/ Frank M. Johnson, Jr.
UNITED STATES DISTRICT JUDGE

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INTERROGATORIES

(Number and Title Omitted) (Filed Sep 14, 1971)

The plaintiffs request that the defendant Henry M. Andrews, Jr., as Superintendent of the Parks and Recreation Program of the City of Montgomery, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. For each and every City owned and operated outdoor (a) football, baseball and softball field and (b) tennis and basketball court having artificial lighting, please give the following information:

(a) the approximate cost to the City for installing the lights

(b) the approximate annual cost for upkeep

and maintenance of the lights

(c) the approximate cost to the City for operating the lights per kilowat hour.

2. Please state the Park and Recreation Department's policy with regard to the use of City owned and operated recreational facilities by private (a) schools and (b) organizations.

3. How long has this policy been in effect?

4. Please state whether the Department of Recreation charges a fee for the use of the City's recreational facilities by:

(a) public schools

(b) private schools

(c) private organizations (excluding the YMCA)

5. If the answer to either 4(a), (b), or (c) is yes, please list what those fees are for the following activities:

(a) day football game

(b) night football game (lighted)

(c) day baseball or softball game

(d) night baseball or softball game (lighted)

(e) indoor basketball game.

6. Please list the factors, if any, which the Department of Recreation considers in deciding:

(a) whether to permit a private school use of available City recreational facilities

(b) whether to deny a private school use of available City recreational facilities.

7. Please attach a schedule, for 1970 and 1971, which gives (or if no schedule is available, please list) the following information:

(a) the name of every private school which was permitted by the Department of Recreation to use City recreational facilities;

(b) the particular recreational facility(ies) used by the private school;

(c) the dates on which the facility(ies) were used;

(d) the amount or fee paid by the school for the use of the facility.

8. Please attach a schedule which gives (or if no schedule is available, please list) the following information:

(a) the name of every private school which has requested permission of the Recreation Department to use City recreational facilities during the period from September 1, 1971 through June 1, 1972;

(b) the particular recreational facility sought to be used by the school;

(c) the dates on which the facility(ies) are sought to be used;

(d) the amount or fee paid (or to be paid) by the school.

9. Please state:

(a) which private schools, if any, are now being, or will during the 1971-72 school year be, permitted to hold their team

practices on or in City recreational facilities;

(b) the particular recreational facility now being, or to be, used;

(c) the amount or fee to be paid by the school.

10. Does the Department of Recreation provide any amenities such as sporting equipment, referees and umpires, etc. to (a) public schools (b) private schools using City recreational facilities?

11. If the answer to 10(b) is yes, please state:

(a) what these amenities are;

(b) the approximate value of these amenities over a year period.

12. How long has the Department of Recreation had its present policy with regard to charging (or not charging) private schools for the use of City recreational facilities?

13. Does the Department of Recreation determine the admission fees at (a) public school football

games (b) private school football games played on City recreational facilities?

14. If the answer to 13(a) or (b) is no, by whom are the fees set.

15. What percentage of the gate collected admission fees at a private school football game goes to:

(a) the City of Montgomery

(b) the private school.

LEVIN & DEES
P. O. Box 2087
Montgomery, Alabama 36103

By s/ Howard Allyn Mandell

ATTORNEYS FOR PLAINTIFFS

ANSWER OF DEFENDANTS TO SHOW CAUSE ORDER

(Number and Title Omitted) (Filed Sep 20, 1971)

COME NOW the City of Montgomery, Alabama, a municipal corporation, et al, Defendants in the above entitled cause, pursuant to the Order of this Court

dated September 9, 1971, and show unto the Court that there is no urgent or demanding necessity that the Plaintiff's motion for preliminary injunction be advanced on the calendar of the Court. The Defendants, as grounds for said response, show unto the Court the following:

All of the recreational facilities maintained by the City of Montgomery are operated on a racially non-discriminatory basis. The Defendants show that football fields, baseball and softball facilities and other recreational facilities are made available without racial discrimination by the City of Montgomery to various sotfball and baseball leagues, civic clubs, church groups, schools and other public and private bodies without discrimination on the basis of application being made and the prescribed fees being paid. The applications are handled on a uniform basis and the same fees are charged without regard to race or color.

The Defendants, subject to the Order of this

Court, will file in the course of these proceedings a full and complete answer, which will include the showing that the question of the availability of recreational facilities to the various groups throughout the City was raised by the Plaintiffs in the petition for further relief filed in August, 1970, and was included in the issues settled between the parties in January of 1971.

s/ Walter J. Knabe
Walter J. Knabe

s/ Drayton M. Hamilton
Drayton M. Hamilton

s/ Joseph D. Phelps
Joseph D. Phelps

ATTORNEYS FOR DEFENDANTS

THE STATE OF ALABAMA,

COUNTY OF MONTGOMERY.

Before me, the undersigned Notary Public in and for the State of Alabama at Large, personally appeared Joseph D. Phelps, who is known to me, and who being by me first duly sowrn, doth depose and

say that the foregoing allegations of fact are true and correct to the best of his knowledge, information and belief.

s/ Joseph D. Phelps
Joseph D. Phelps

SWORN TO and subscribed before me this 20th day of September, 1971.

s/ Brenda B. Kirby
Notary Public

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ANSWERS TO INTERROGATORIES

(Number and Title Omitted) (Filed Sep 29, 1971)

COMES NOW the Defendant, Henry M. Andrews, and files the following answers to the Interrogatories heretofore served on him:

1. (a)

Softball and Baseball:

Chisholm	$22,240.44
Carver	11,828.72
Houston Hill	8,253.28

Goodwyn	4,660.00
Cloverdale	11,175.00**
Bellingrath	6,154.00
Capitol City Boys Club	5,379.00
Highland Gardens	3,375.00
Coliseum Blvd Softball	5,479.00

** Combination baseball and football

Football:

Cloverdale (baseball lighting used)	
Goodwyn	6,290.00
Bellingrath	2,069.00

Basketball:

Kings Hill	1,975.00

Tennis:

O'Conner Tennis Complex (Bruce)	25,430.00

(b) No breakdown is available on separate facilities. Overall electrical maintenance for the year September, 1970 to September, 1971 is as follows:

Labor - 300 hours at $6.50 per hour - $1,950.00;

Bulbs - 140, 1500 inca. bl. at $2.70 - $378.00

Bulbs - 36 Quartz at $9.56 - $344.16

(c) $ .045 per kilowatt hour.

2. The Parks and Recreation Department makes all recreational facilities available to the public generally and to organized groups for athletic competition upon application being made and upon the prescribed fee being paid.

3. From inception.

4. (a) No

(b) Yes

(c) Yes

5. (a) No charge made to any group.

(b) Either a fee of from $25.00 to $60.00, depending upon the number of lights, or 5% of the gate, whichever is greater.

(c) No charge made to any group.

(d) No charge made to any group.

(e) No charge made to any group.

6. Whether facility has already been scheduled for time requested, publicly sponsored league events are given preference. All applicants must meet regulations regarding use of facility with regard to: (1) use of alcoholic beverages, and, (2) adequate crowd control.

7. (a), (b), and (c):

(1) St. James Junior High School - Bellingrath football facility, one time during 1970 season; game played in afternoon; no charge.

(2) St. James Junior High School - Cloverdale football facility on September 17, 1971; game played at night; fee of $60.00 paid to City.

(3) See attached Schedule 1.

(d) The fee of from $25.00 to $60.00 or 5% of the gate, whichever is greater, is

charged for all night football games. Facilities report actual amounts taken in at end of season.

8. See Answer to Interrogatory No. 7 above.

9. (a) None

   (b) None

   (c) N/A

10. (a) Junior high school age leagues are operated by the City for the following teams: Baldwin, Bellingrath, Capitol Heights, Carver, Cloverdale, Floyd, Goodwyn, Hayneville Road, Houston Hill, Loveless, McIntyre, and B. T. Washington. In this program, the amount of $500.00 is annually furnished to each team for athletic equipment. Four football umpires are furnished at $8.00 per man for 5 games, and two basketball officials are furnished at $5.00 per man for 10 games. Practice ball is furnished to each team.

(b) No equipment or other amenities furnishe to private schools.

11. See Answer to Interrogatory No. 10 above.

12. From inception.

13. For City Recreation sponsored junior high age group, admission fees are set by the City. All other groups set their own admission fees.

14. See Answer to Interrogatory No. 13 above.

15. Fee of either $25.00 to $60.00, depending upon number of lights is paid to the City. Balance o gate goes to private school.

s/ Henry M. Andrews
HENRY M. ANDREWS

CITY OF MONTGOMERY, ALABAMA

BY: s/ Joseph D. Phelps
ASSISTANT CITY ATTORNEY

THE STATE OF ALABAMA,

COUNTY OF MONTGOMERY.

Before me, the undersigned authority, personall appeared HENRY M. ANDREWS, who is known to me, and

who being by me first duly sworn, doth depose and say, that the facts set forth in the foregoing ANSWERS TO INTERROGATORIES are true and correct to the best of his knowledge, information and belief.

s/ Henry M. Andrews
HENRY M. ANDREWS

SWORN to and subscribed before me
on this 29th day of September, 1971.

s/ Brenda B. Kirby

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SCHEDULE 1.

FOOTBALL GAMES ON GOODWYN FIELD

DATE	TIME	TEAMS
9/9	3:45 PM	Goodwyn "B" v. Bellingrath
9/10	3:45 PM	Goodwyn "C" v. Bellingrath
9/10	7:30 PM	Montgomery Academy v. Wilcox County
9/11	10:00 AM	Goodwyn "A" v. Loveless
9/11	8:00 PM	Stephens Spear v. Edgewood
9/14	6:00 PM	Lee "B" v. Dothan

DATE	TIME	TEAMS
9/16	3:45 PM	Goodwyn "B" v. Floyd
9/23	7:00 PM	Central Alabama Academy v. Chambers Co.
9/24	8:00 PM	Stephen Spear v. Sparta
9/25	10:00 AM	Goodwyn "A" v. Carver
9/25	7:30 PM	Catholic v. Long
9/29	7:00 PM	Lee "B" v. Jeff Davis
10/2	10:00 AM	Goodwyn "A" v. B.T. Washington
10/4	7:00 PM	Lee "B" v. Enterprise
10/7	7:30 PM	Stephen Spear v. Central Ala. Academy
10/8	3:45 PM	Goodwyn "C" v. Baldwin
10/8	6:00 PM	Montgomery Academy "B" v. Lakeside
10/8	7:30 PM	Montgomery Academy "A" v. Lakeside
10/14	3:45 PM	Goodwyn "B" v. Baldwin
10/15	7:30 PM	Montgomery Academy v. Pleasant Grove
10/16	7:30 PM	Central Alabama academy v. Edgewood
10/19	7:30 PM	Lee "B" v. Lanier
10/22	3:45 PM	Goodwyn "C" v. Capitol Heights
10/23	8:00 PM	Stephen Spear v. Greenville
10/26	7:00 PM	Lee "B" v. Selma

DATE	TIME	TEAM
10/28	3:45 PM	Goodwyn "B" v. Capitol Heights
10/28	7:30 PM	Central Alabama Academy v. Greenville
10/29	8:00 PM	Stephen Spear v. Shelby
10/30	7:00 PM	Goodwyn "A" v. Capitol Heights
11/4	7:30 PM	Stephen Spear v. Perry C.
11/12	7:30 PM	Central Alabama Academy v. Tallapoosa

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ANSWER OF DEFENDANTS TO PLAINTIFFS' MOTION FOR SUPPLEMENTAL RELIEF

(Number and Title Omitted) (Filed Oct 12, 1971)

COME NOW the Defendants in the above entitled cause, and in response to the Petition for Supplemental Relief heretofore filed by the Plaintiffs, respectfully represent and show unto the Court as follows:

1) The Motion for Supplemental Relief fails to state a claim against these Defendants upon which relief may be granted.

2) The Motion for Supplemental Relief fails to set forth sufficient facts upon which the relief prayed for can be granted.

3) The Motion for Supplemental Relief, in seeking to enjoin the Defendants from allowing certain groups to utilize municipal recreational facilities, is not germane to the original case which sought to obtain and did obtain equal access to all municipal facilities for all persons, regardless of race.

4) The Motion for Supplemental Relief, in seeking to have the Court compel these Defendants to deny groups and organizations equal access to public recreational facilities because of the racial composition of such groups and organizations, is inconsistent with and repugnant to the original cause of action.

5) The Defendants show that the class represented by the Plaintiffs and organized groups from such class do, in fact, have the opportunity and ability

to enjoy, in an integrated fashion if they so desire, all recreational facilities operated by the City of Montgomery for the citizens of this municipality. The Plaintiffs, therefore, have had no burden placed on them as a racial group and have not been deprived of any constitutionally protected rights.

6) These Defendants deny that they have engaged in any policy, practice or custom which discriminates between racial groups with regard to the availability of recreational facilities and Defendants deny that they have engaged in any policy, practice or custom which violates the Plaintiffs' rights under the equal protection and due process clause of the Constitution of the United States. Municipal facilities in the City of Montgomery are not exclusively leased to any particular group and such facilities are not made available exclusively to any particular group. Football, basketball and baseball facilities are made available to groups who make application therefor on a non-discriminatory basis without regard to race or color, including

such private groups as churches, athletic leagues, civic clubs, charitable organizations and educational institutions without regard to race or color. Athletic participation which is sponsored by the Parks and Recreation Board, i.e., junior high school age football teams, are given preference in facility scheduling. All municipal recreational facilities throughout the City of Montgomery are open to all on an equal basis with people of the community all having equal access thereto, without regard to race or color.

CITY OF MONTGOMERY, ET AL,
DEFENDANTS

BY: s/ Walter J. Knabe
WALTER J. KNABE

s/ Drayton M. Hamilton
DRAYTON M. HAMILTON

s/ Joseph D. Phelps
JOSEPH D. PHELPS

THE STATE OF ALABAMA,

COUNTY OF MONTGOMERY.

Before me, the undersigned authority, personally

appeared Joseph D. Phelps, who is known to me, and who being by me first duly sworn, doth depose and say that he is Assistant City Attorney for the City of Montgomery and as such has knowledge of the facts set forth in the foregoing ANSWER and that such facts are true and correct to the best of his knowledge, information and belief.

s/ Joseph D. Phelps
JOSEPH D. PHELPS

SWORN TO and subscribed before me

this 11 day of October, 1971.

s/ Brenda B. Kirby
NOTARY PUBLIC, STATE AT LARGE

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DEFENDANTS' MOTION FOR SUBSTITUTION OF PARTIES DEFENDANT

(Number and Title Omitted) (Filed Dec 1, 1971)

COME NOW the Defendants in the above entitled cause and respectfully show that the Board of Commissioners of the City of Montgomery, Alabama,

a municipal corporation, is now composed of Jim Robinson as Mayor, with Cliff Evans and J. B. Rucker as Commissioners.

The Parks and Recreation Board, by virtue of recent legislation, is now legally entitled the Recreation Board of the City of Montgomery, and is composed of the following seven members: Rufus A. Lewis, Jean B. Campbell, James Hall, Mureal R. Crump, Charles Stakely, Charles W. Ross, and James E. Vice, Jr.

The Defendants respectfully suggest to the Court that substitution of the parties Defendant would be appropriate.

s/ Joseph D. Phelps,
JOSEPH D. PHELPS, ASSISTANT CI
ATTORNEY, CITY OF MONTGOMERY,
ALABAMA

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AGREEMENT FOR SUBMISSION OF CASE

(Number and Title Omitted) (Filed Dec 1, 1971)

COME NOW the Plaintiffs and the Defendants in the above entitled case, by and through their attorneys, and do hereby agree for the case to be submitted to the Court on the pleadings filed by the parties, the answers to interrogatories heretofore filed by the defendants, and upon the Fact Stipulation as attached hereto.

GEORGIA THERESA GILMORE, ET AL

BY: s/ Morris S. Dees, Jr.
ATTORNEY FOR PLAINTIFFS

CITY OF MONTGOMERY, ET AL

BY: s/ Joseph D. Phelps
ASSISTANT CITY ATTORNEY,
ATTORNEY FOR DEFENDANTS

FACT STIPULATION

(Number and Title Omitted)

The City of Montgomery has constructed and now maintains football fields adjacent to various community centers in Montgomery. The land on which these fields are built belongs to the Montgomery

County School Board. The City of Montgomery Recreation Department, by agreement with the School Board, has constructed and maintains these fields.

These football fields are fenced, sodded, and some are lighted for night use. Bleachers are provided for each field to seat approximately 600 people. Public restrooms and concession stands are provided adjacent to most football fields.

The first use of these football fields is allocated by the City Recreation Department to the twelve public junior high schools of the Montgomery County Board of Education. The City Recreation Department, through the City of Montgomery, pays the electric bills for any night use of the fields by public schools.

Additional use of these football fields are assigned by the City Recreation Department to the Montgomery YMCA's elementary school football leagues free of charge for Saturday day games. Private

schools are allowed to use the fields for day games at no cost and are charged an amount for night games to cover the cost of electric service and other expenses. This varies from a fee of $25.00 to $60.00 per game, depending on the number of lights at the field, or five percent (5%) of the gate, whichever is greater. After paying the City the prescribed fee, the private school is allowed to keep the balance of the gate receipts. The amount of this excess depends on the size of the crowd.

St. James Academy used Bellingrath Field during 1970 for one game in the daytime at no charge. For the 1971 season, Goodwyn Field will be used by the St. James Academy, the Montgomery Academy, Stephens-Spear School and Central Alabama Academy. Each is a Montgomery based private school.

The Stephens-Spear School and Central Alabama Academy have all white student bodies. The Central Alabama Academy has applied for an IRS Non-Profit Status. This application is still pending. Stephen-

Spear School is not a non-profit organization and, therefore cannot apply for IRS Non-Profit Status. The first terms of Stephens-Spear School and Central Alabama Academy were both held in September, 1970. The brochure, Exhibit "A", of Plaintiffs' Motion for Supplemental Relief was adopted and distributed by Stephens-Spear School.

Both Stephens-Spear School and Central Alabama Academy offer varsity football and are members of the Private School Athletic Association. Neither Stephens-Spear School nor the Central Alabama Academy has a football field owned by the school suitable for playing competitive games. Member schools of the Private School Athletic Association are not allowed, without special permission by the Association, to schedule games with schools which are not members of the Private School Athletic Association.

The Montgomery Academy was formed in 1959. It has an all white student body. However, it is committ by its bylaws, as well as by public announcement, to

an open admission policy on a non-discriminatory basis. It holds a certificate of tax exemption from the Internal Revenue Service based upon non-discriminatory racial policies. The Montgomery Academy is a member of the Alabama High School Athletic Association, which association includes both public and private schools. It is a condition of membership in this Association that the member schools have a non-discriminatory racial enrollment policy and all member schools have an open admission policy. Members of the Association schedule games only with other members of the Association. The Montgomery Academy schedules games with both public and private schools which are members of the Association whose playing teams and student bodies are integrated, and the playing field, gymnasium and facilities of the Montgomery Academy are used, as well as the playing fields, gymnasiums and facilities of other members of the Association.

St. James Parish School is a private school formed in 1955 by the Minister of St. James Methodist Church and by other interested parties, as a non-sectarian educational institution. It has an all white student body but has an open enrollment policy and is open to students solely on the basis of scholastic achievement, conduct and character. St. James is fielding its first football team this year. The school goes only through the 10th grade and will go through the 11th grade in the 1972-73 school year. St. James School does not belong to an athletic association. It schedules games with teams that have an open game and mainly with "B" and "C" teams.

Municipal recreational facilities in the City of Montgomery are not exclusively leased to any particular group and such facilities are not made available exclusively to any particular group. Football, basketball, and basefall facilities are made available to groups who make application therefor on a non-discriminatory basis without regard to race or

color, including such private groups as churches, athletic leagues, civic clubs, charitable organizations and educational institutions without regard to race or color. Athletic participation which is sponsored by the Parks and Recreation Board, i.e., junior high school age football teams, are given preference in facility scheduling. All municipal recreational facilities throughout the City of Montgomery are open to all on an equal basis with people of the community all having equal access thereto, without regard to race or color.

The parties to this action have agreed to submit this cause on the above stipualtion of facts.

GEORGIA THERESA GILMORE, ET AL

BY: s/ Morris S. Dees, Jr.
ATTORNEY FOR PLAINTIFFS

CITY OF MONTGOMERY, ET AL

BY: s/ Joseph D. Phelps
ASSISTANT CITY ATTORNEY
ATTORNEYS FOR DEFENDANTS

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ORDER OF SUBSTITUTION

(Number and Title Omitted) (Filed Jan 17, 1972)

Upon consideration of the motion of the defendants filed herein on December 1, 1971, and pursuant to Rule 25(d), Federal Rules of Civil Procedure, it is ORDERED that Jim Robinson, Cliff Evans and J. B. Rucker be and they are hereby substituted as party defendants and as members of the Board of Commissioners of the City of Montgomery for W. A. Gayle, Frank W. Parks and Clyde C. Sellers.

It is further ORDERED that Rufus A. Lewis, Jean B. Campbell, James Hall, Mureal R. Crump, Charles Stakely, Charles W. Ross, and James E. Vice, Jr., be and they are hereby substituted as party defendants and as members of the Recreation Board of the City of Montgomery (formerly the Park and Recreation Board of the City of Montgomery) for Mrs. James Fitt Hill, Father M. J. Rafferty, Rev. Louis Armstrong, Florian Strassburger and Jack Hope.

It is further ORDERED that Henry M. Andrews

be and he is hereby substituted as a party defendant and as Superintendent of the Parks and Recreational Porgram for the City of Montgomery, Alabama, for T. A. Belser.

Done, this the 17th day of January, 1972.

s/ FRANK M. JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

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NOTICE OF APPEAL

(Number and Title Omitted) (Filed Feb 11, 1972)

Notice is hereby given that the defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the injunction and order of the United States District Court for the Middle District of Alabama, Northern Division, entered in this action on the 18th day of January, 1972 as fully set forth in the order and injunction of said date.

DONE this 10th day of February, 1972.

s/ Joseph D. Phelps
ASSISTANT CITY ATTORNEY

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MOTION FOR STAY PENDING APPEAL

(Number and Title Omitted) (Filed Mar 15, 1972)

Come now the defendants in the above entitled ca and respectfully show unto the Court that they have appealed to the United States Court of Appeals for the Fifth Circuit from the order and injunctive decree of this court made and entered herein on January 18, 1972 Copies of the Motion of Appeal and the Bond for Costs on Appeal are attached hereto and made a part hereof as Exhibits 1 and 2 respectively.

The defendants now move this Court to stay pendi appeal the following portions of the injunctive order:

"That said City of Montgomery, Alabama, its officers, agents, servants, employees and those acting in concert with it, be and each is hereby enjoined from permitting or in any way sanctioning the use of city owned or operated recreational facilities by any private group, club or organization which is not affiliated with a private school and which has a racially discriminatory admissions policy."

"That said City of Montgomery, Alabama, its officers, agents, servants, employees, and those acting in concert with it, be and each is hereby enjoined from permitting or in any way sanctioning the use of city owned or operated recreational facilities by any private school, or private school affiliated group, if such school or group is racially segregated or if it has a racially discriminatory admissions policy."

The defendants show that a stay of the above injunctive order pending appeal will not result in harm or injury to the plaintiffs, to the class which they represent, or to any citizen or resident of the City of Montgomery, Alabama, especially since all recreational facilities of this municipality are in fact open and available to all persons and to all groups of persons on a non-discriminatory basis and without regard to race or color. These defendants show that the order of this court of January 18, 1972, involves far reaching pronouncements of legal principles heretofore inprecidented in this Circuit.

The defendants further show that an implementat
of the injunctive orders pending appeal will require
private civic, religious, charitable, social and othe
non-public organizations to decide pending review as
whether they must affirmatively adopt an open admissi
policy or forfeit the use of municipal recreational
facilities. These defendants specifically urge that
all constitutional requirements are met when recreati
facilities are in fact open to all persons without
regard to race or color and on a non-discriminatory
basis. In any event, no person will be constitutiona
harmed or denied the use of any and all municipal
recreational facilities if this stay is granted
pending appeal. The defendants therefore show that
justice will be served by the granting of the
stay herein requested and by thereby allowing all
persons and groups regardless of race to continue
to use these recreational facilities pending appella
review of the order of this court.

s/ Joseph D. Phelps
JOSEPH D. PHELPS,
ASSISTANT CITY ATTORNEY

STATE OF ALABAMA

COUNTY OF MONTGOMERY,

Before me, the undersigned authority, in and for the State of Alabama at Large, personally appeared Joseph D. Phelps, who is known to me and who being by me first duly sworn on oath dothe depose and say as follows: That the facts and averments set forth in the above and foregoing Motion for Stay Pending Appeal are true and correct to the best of his knowledge, information, and belief.

s/ Joseph D. Phelps
JOSEPH D. PHELPS

SWORN TO and subscribed before me on this 15th day of March, 1972.

s/ Laquita G. Gothard
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that I have this day delivered a copy of the foregoing Motion for Stay Pending Appeal

by hand to Honorable Morris Dees of Montgomery, Alabama, on this 15th day of March, 1972.

s/ Joseph D. Phelps
OF COUNSEL

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O R D E R

(Number and Title Omitted) (Filed Mar 16, 1972)

Upon consideration of the defendants' motion for stay pending appeal and by agreement of the plaintiffs, it is ORDERED that that part of the decree of this Court made and entered January 18, 1972, reading as follows:

> "That said City of Montgomery, Alabama, its officers, agents, servants, employees and those acting in concert with it, be and each is hereby enjoined from permitting or in any was sanctioning the use of city owned or operated recreational facilities by any private group, club or organization which is not affiliated with a private school and which has a racially discriminatory admissions policy."

be and the same is hereby stayed pending a determination of the matter upon appeal.

The sole basis for granting defendants' motion is plaintiffs' agreement thereto, and the granting thereof should not be interpreted as a feeling on the part of this Court that the portion of said decree herein stayed is not, in all respects, correct. To the contrary, this Court feels that all portions of the decree made and entered herein are proper and, indeed, required by the facts presented in connection with this matter and the applicable and controlling law.

It is further ORDERED that all other provisions in the decree of this Court made and entered January 18, 1972, remain in force and effect.

Done, this the 16th day of March, 1972.

s/ Frank M. Johnson, Jr.
UNITED STATES DISTRICT JUDGE

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MOTION FOR PRELIMINARY INJUNCTION

(Number and Title Omitted) (Filed Sep 8, 1971

Upon the Motion for Supplemental Relief and testimony to be offered at a hearing to be held on this Motion, Plaintiffs move the Court for a preliminary injunction as prayed for in the Motion for Supplemental Relief therein set forth and as grounds assign the following:

1. The Private School Football League has already begun its 1971-72 football season. Stephens-Spear's first home game is scheduled for Saturday night, September 11, at Goodwyn Community Center football field. Central Alabama Academy's first home football game is scheduled for Thursday night, September 23, at Goodwyn Community Center football field.

2. This is not the first time the defendants have permitted the City's revenues and facilities to be used by racially segregated private schools and groups. See Smith v. YMCA, supra. Furthermore, these segregated schools and other racially segregate

schools and groups will probably request and be allowed to use other City recreational facilities before this cause is decided on the merits by the Court. It is imperative that this unconstitutional practice is terminated before plaintiffs' rights are further violated.

3. The law is so well settled in this area of the law that defendants' conduct is patently unconstitutional. Plaintiffs' Equal Protection and Due Process rights are present and immediate rights and plaintiffs should not be required to suffer further deprivations of their rights while awaiting a ruling from the Court on the merits of the case.

4. Any prejudice or harm to the defendants resulting from the issuance of a Preliminary Injunction is far outweighed by the irreparably injury which will be suffered by plaintiffs if this motion is denied.

Respectfully submitted,

LEVIN & DEES

By s/ Howard Allyn Mandell
Howard Allyn Mandell

ATTORNEYS FOR PLAINTIFFS

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Before me, a Notary Public in and for the State of Alabama at Large, personally appeared Howard Allyn Mandell, who, being duly sworn, deposes and says that the foregoing allegations of fac are true and correct to the best of his information, knowledge and belief.

s/ Howard Allyn Mandell
Howard Allyn Mandell

SWORN TO AND SUBSCRIBED before me

this 8th day of September, 1971.

s/ Becky Ann Logan
Notary Public

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Supreme Court of the United States

No. 72-1517

Georgia Theresa Gilmore, et al.,

Petitioners,

v.

City of Montgomery, Alabama, et al.

ORDER ALLOWING CERTIORARI. Filed October 15 ----------, 19 73.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth ----------Circuit is granted.